

# Exhibit D

**From:** Rob Chang <[rob@gryphonmining.com](mailto:rob@gryphonmining.com)>  
**Sent:** Monday, May 15, 2023 5:07 PM  
**To:** Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)>  
**Cc:** Patricia Trompeter <[Patricia.Trompeter@sphere3d.com](mailto:Patricia.Trompeter@sphere3d.com)>; [dan@gryphonmining.com](mailto:dan@gryphonmining.com)  
**Subject:** Re: Sale

**External Sender:**

Kurt,

Unfortunately you either misunderstand the MSA or are mischaracterizing the MSA. The Parties agreed that Gryphon is responsible for paying “all operating costs” for Sphere; Gryphon continues to be frustrated by Sphere’s refusal to provide information that Gryphon needs to pay Sphere’s operating costs, such as contact information and invoices from its various vendors, including those you admit Sphere is paying directly (a square breach of the MSA). The MSA likewise does not require Gryphon to transfer any amount of BTC to Sphere any time Sphere requests it; the MSA simply requires that appropriate requests as contemplated in the MSA must be in writing; the MSA does not state that if a request is made in writing, it must be adhered to.

By way of an easy example to demonstrate that your reading of the MSA is wrong, under your interpretation, Sphere could attempt to demand that Gryphon transfer more BTC than is held in the digital wallet. There is no reasonable reading of the MSA that would require this. Likewise, even in a less extreme hypothetical, according to your reading, Sphere could request all funds in the wallet, which would leave nothing in the digital wallet to pay Sphere’s operating costs, to pay those operating costs in a timely manner (the failure of which could subject Sphere to additional costs), and/or to pay Gryphon’s agreed upon Management Fees. There is simply no support for the way you are reading the MSA. Given the amount of fees expected to be due, Gryphon estimates that it will need to keep a balance to cover payment of Sphere’s operating expenses as they come due; otherwise Sphere appears to be demanding that Gryphon provide working capital loans to Sphere, which is not contemplated in the MSA or otherwise ever agreed to or practiced by the parties.

As I’ve mentioned many times, Gryphon cannot perform under the MSA if Sphere will not provide the minimum, basic information required for Gryphon to do so. This includes contacts at Lancium and Rebel, which I’ve requested 3 times in the below email thread alone. Please send me that information as soon as possible. As to operating expenses that Sphere has already paid, all of which should have been paid by Gryphon under the MSA, please send evidence of the invoice received and matching payment so we can consider releasing amounts accordingly (amounts that under the MSA should have been paid by Gryphon). Thereafter, Gryphon will take over those payments going forward as the parties agreed under the MSA. Gryphon is not waiving, acquiescing, or ratifying any conduct by Sphere, and expressly reserves all rights.

Thanks,

Rob

On Fri, 12 May 2023 at 14:05, Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)> wrote:

Rob,

To be clear, you are refusing to honor our clear instructions to sell Digital Assets.

- I requested the sale of 11 BTC on 5/9 and asked you to remit the funds to RBC – You did not sell
- I requested you remit the funds from the sale you made on 5/9 for 4.2 BTC informing you payment was already in process– You have not confirmed that cash will be transferred.
- I requested again on 5/11 that you sell 11 BTC and again requested the funds from the sale be remitted to our account—You did not sell.
- I also in the same email on 5/11 requested that the funds from the sale of 4.2 BTC, which we did not request, be remitted to our account as that invoice for USBTC had already been paid.—You did not do so.

All I am trying to do is get you to sell the BTC and remit the funds to my operating account, which Gryphon is required to do under the MSA. There is nothing in the MSA about “required minimum deposit”. If I have missed that, please point out that language so I can review. We have never left you in a position to not have adequate funds to cover any invoices that you have paid on our behalf, either by sending cash or authorizing the sale of BTC to cover.

The invoice upcoming next week for Coinmint should be aprox \$40,000. The invoice due to Generate Capital at the end of the month will be \$346,000, unless you double paid the invoice we already paid, then it will be only \$230,000 . Over the past 10 days we have averaged deposits of over 2.6 BTC each day. There should be no issues generating adequate BTC to cover the amount due to Coinmint and Generate Capital when they come due. If you are insisting you must take over and make payments directly to Generate Capital moving forward, we should discuss to be sure the logistics are in place to do so and no payments are missed. If we move Generate Capital to this method, you will need to request authorization to sell BTC to cover the amount of the invoice at that time just as we have done with Coinmint since the inception.

Because these amounts due are not significant I would again request you sell BTC and remit the proceeds to our RBC account. The amount of BTC I would like you to sell is 19 BTC. And if you did not double pay the Generate capital invoice, please remit the \$117,000 from that sale as well.

Finally, if you are refusing to talk to me, please inform me how that is consistent with the MSA.

Thanks

Kurt

**Kurt Kalbfleisch**

**Senior Vice President and CFO**

**Sphere 3D**

858.775.6801

[kurt.kalbfleisch@sphere3d.com](mailto:kurt.kalbfleisch@sphere3d.com)

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**From:** Rob Chang <[rob@gryphonmining.com](mailto:rob@gryphonmining.com)>

**Sent:** Friday, May 12, 2023 7:59 AM

**To:** Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)>

**Cc:** Patricia Trompeter <[Patricia.Trompeter@sphere3d.com](mailto:Patricia.Trompeter@sphere3d.com)>; [dan@gryphonmining.com](mailto:dan@gryphonmining.com)

**Subject:** Re: Sale

Kurt,

We are going in circles. I don't understand what you mean by "made-for-litigation position" in this context. Our position is wholly dependent on your failures to adhere to the MSA – or to in any way act in good faith with respect to the parties' contractual agreement and business dealings in the ordinary course. To be clear, we would much rather not litigate every straightforward contractual term in the MSA and instead rely on Sphere adhering to its obligations as promised. Sphere, apparently, feels differently. In any event, this back and forth is not productive. We will be in touch through counsel.

On Thu, 11 May 2023 at 13:52, Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)> wrote:

Rob,

This is a made-for-litigation position. As you are well aware, Sphere has routinely paid hosts directly, which is consistent with the term in the MSA that “Customer shall provide written instructions to Provider with respect to all decisions to sell or hold Digital Assets.” Gryphon has never asserted that our direct payment is a breach of the MSA. If you wish to dispose of Digital Assets in order to pay operating costs, that must come with our approval. We of course will not unreasonably hold that approval, but you must explicitly seek permission before doing so. Please confirm you will do so.

Next, there is no basis in the MSA for your assertion that Gryphon needs to keep approximately \$530,000 of USD value in the wallet at all times, which is again another made-for-litigation position. There is no basis in the text of the MSA for the position. Nor is it consistent with the prior practice of the parties—indeed, this is the first time that Gryphon has ever indicated that there must be any sort of minimum in the account. Instead, it appears that Gryphon is resorting to self-help: Gryphon’s “required minimum deposit” just so happens to correspond to its damages against Sphere for alleged negligence (which of course is money Gryphon lost due to its own negligence in falling for a spoofing attack). Again, we of course ensure that all bills for operating costs are paid, but it cannot be that Gryphon can unilaterally refuse our requests to honor written instructions to hold or sell Digital Assets.

So I ask again: will you adhere to my written instruction to sell the 11 BTC, and also send us the cash from the 4.200681BTC you sold on 5/10 related to an USBTC invoice we have already paid? Or are you refusing?

Finally, Patti believes she already sent the contacts you requested; she will follow up there in any event and make sure you have them.

Thanks

Kurt

**Kurt Kalbfleisch**

**Senior Vice President and CFO**

**Sphere 3D**

858.775.6801

[kurt.kalbfleisch@sphere3d.com](mailto:kurt.kalbfleisch@sphere3d.com)

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**From:** Rob Chang <[rob@gryphonmining.com](mailto:rob@gryphonmining.com)>

**Sent:** Wednesday, May 10, 2023 10:40 AM

**To:** Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)>

**Cc:** Patricia Trompeter <[Patricia.Trompeter@sphere3d.com](mailto:Patricia.Trompeter@sphere3d.com)>; [dan@gryphonmining.com](mailto:dan@gryphonmining.com)

**Subject:** Re: Sale

Kurt,

Thank you for your email. The parties already agreed in the MSA that Gryphon would sell Digital Assets to pay these fees. Specifically, in the MSA, the parties agreed that Gryphon "shall pay directly from the Digital Wallet on behalf of [Sphere] all operating costs, inclusive of electricity and any profit share to hosts, such payments to occur prior to calculation and payment of the Management Fee." Sphere paying these fees directly, or preventing Gryphon from so doing, is a breach of the MSA.

As to the USBTC charges mentioned below, I've attached two PDFs of emails from USBTC noting past due payments. Gryphon is selling bitcoin to pay Sphere's operating costs consistent with its obligations in the MSA.

Given that the parties agreed that Gryphon is required to pay operating costs for Sphere in the MSA, Gryphon needs to maintain an adequate amount of value to cover these cash flows. Based on the bills seen from USBTC and CoinMint, Gryphon needs to keep approximately \$530,000 of USD value in the wallet for these purposes (based on USBTC monthly invoice of ~\$450,000 and most recent CoinMint semi-monthly invoice of ~\$40,000 x 2). As there is currently only 14.38750744 BTC in your wallet (USD equivalent of ~\$417,000) we are unable to withdraw and sell at this time (understanding that we also need to assume these responsibilities for Lancium and Rebel Mining). However, Gryphon cannot fulfil its obligations under the MSA if Sphere refuses to allow Gryphon to retain sufficient cash flows to pay Sphere's expenses as they come due. As to your request to confirm the transfer at issue, we received confirmation of the wire transfer this yesterday. Attached is the confirmation as well.

Unfortunately, despite multiple requests, we still have not been provided with contacts at Lancium and Rebel. Please send along the names/telephone numbers/email addresses for Sphere's contacts at Lancium and Rebel, along with Sphere's consent for Gryphon to manage those accounts as agreed to by the parties in the MSA.

Thank you,

On Tue, 9 May 2023 at 12:11, Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)> wrote:

Rob,

The Agreement provides that “Customer shall provide written instructions to Provider with respect to all decisions to sell or hold Digital Assets.” Please let me know how your proposal is consistent with that language. Please also let me know if you have made any other decisions to sell or hold our Digital Assets that we did not authorize.

While we want to be efficient, any proposal must be consistent with the MSA. You also state in your email that you have “noticed multiple delayed payment notices from USBTC.” Please detail what those delays were and how they caused any issues with USBTC or otherwise.

Next, I noticed this morning that you sold 4.200681BTC, apparently to pay the most recent USBTC invoice. We did not authorize that sale of BTC or that use of proceeds. We are already processing payment for that invoice, and we will continue to pay invoices. Please send the cash from the already processed sale to our RBC account.

In addition, please sell another 11 BTC from our wallet and send that cash to our RBC account. Can you also provide confirmation of the wire for the sale on May 3, as we have not yet received that transfer.

Finally, my understanding is that Patti provided you with the contacts you requested some time ago.

**Kurt Kalbfleisch**

**Senior Vice President and CFO**

**Sphere 3D**

858.775.6801

[kurt.kalbfleisch@sphere3d.com](mailto:kurt.kalbfleisch@sphere3d.com)

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**From:** Rob Chang <[rob@gryphonmining.com](mailto:rob@gryphonmining.com)>

**Sent:** Friday, May 5, 2023 10:32 AM

**To:** Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)>

**Cc:** Patricia Trompeter <[Patricia.Trompeter@sphere3d.com](mailto:Patricia.Trompeter@sphere3d.com)>; [dan@gryphonmining.com](mailto:dan@gryphonmining.com)

**Subject:** Re: Sale

Kurt

The MSA notes that Gryphon manages all blockchain operations for Sphere. Currently we are already paying the CoinMint invoices in this manner. The current setup of having Sphere request, Gryphon transfer to an account that can sell, Gryphon selling the coin, Gryphon transferring the cash to its bank account, and Gryphon transferring the cash to Sphere to then send payment to host providers creates a lag that may cause missed payments which is a risk to the blockchain operation. We are not charging any additional fees for this management outside of standard transaction costs charged by BitGo and/or financial institutions. We have already noticed multiple delayed payment notices from USBTC and we believe us doing this for Sphere directly is ideal for all parties and consistent with the language of the MSA.

This also reminds us that we have requested access and contacts for Lancium and Rebel. The former we have no contacts for and for both we do not believe either has been instructed to provide Gryphon with admin access that is consistent with the MSA.

On Fri, 5 May 2023 at 13:22, Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)> wrote:

Rob –

Sphere intends to continue to pay in these vendor invoices in cash as they come due. The MSA provides that only Sphere can make a decision to sell digital assets. Can you please explain how your plan is consistent with the MSA?

Thanks,

**Kurt Kalbfleisch**

**Senior Vice President and CFO**

**Sphere 3D**

858.775.6801

[kurt.kalbfleisch@sphere3d.com](mailto:kurt.kalbfleisch@sphere3d.com)

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**From:** Rob Chang <[rob@gryphonmining.com](mailto:rob@gryphonmining.com)>

**Sent:** Thursday, May 4, 2023 12:17 AM

**To:** Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)>

**Cc:** Patricia Trompeter <[Patricia.Trompeter@sphere3d.com](mailto:Patricia.Trompeter@sphere3d.com)>; Dan Tolhurst <[dan@gryphonmining.com](mailto:dan@gryphonmining.com)>

**Subject:** Re: Sale



Sale of 13 BTC completed. Proceeds less Bitgo's customary \$10 withdrawal fee will be sent to your RBC account as soon as it clears and is deposited into our bank account. Confirmation attached.

Please note, now that we have setup bill visibility with USBTC, we will assume management responsibility and pay their invoices out of your BTC earned starting with bills received after today. Sphere will still be responsible for paying bills sent by USBTC prior to today.

Please also, set us up with similar access and controls with Lancium and Rebel so that we can continue managing your blockchain operations as per the MSA.

On Wed, 3 May 2023 at 12:30, Rob Chang <[rob@gryphonmining.com](mailto:rob@gryphonmining.com)> wrote:

Underway

On Tue, 2 May 2023 at 17:01, Kurt Kalbfleisch <[Kurt.Kalbfleisch@sphere3d.com](mailto:Kurt.Kalbfleisch@sphere3d.com)> wrote:

Rob,

Please sell 13 BTC from our wallet and wire the proceeds to our RBC account.

Thanks

Kurt

**Kurt Kalbfleisch**

**Senior Vice President and CFO**

**Sphere 3D**

858.775.6801

[kurt.kalbfleisch@sphere3d.com](mailto:kurt.kalbfleisch@sphere3d.com)

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Rob Chang

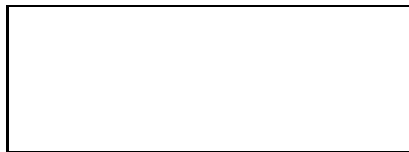
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